

LEGAL REVIEW NOTE

LC#: LC1075, To Legal Review Copy, as of
February 11, 2013

Short Title: Generally revise campaign finance and
disclosure laws

Attorney Reviewer: Ginger Aldrich/Todd Everts

Date: February 12, 2013

CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

Legal Reviewer Comments:

Section 1 of LC1075, prohibiting independent expenditures and electioneering communications by corporations, may raise potential constitutional conformity issues with freedom of speech provisions under the First Amendment to the United States Constitution and Article II, section 7, of the Montana Constitution.

In *Citizens United v. FEC*, 558 U.S. 310, 75 L. Ed. 2d 753 (2010), the U.S. Supreme Court overturned federal limits on corporate independent expenditures, taking up the specific issue of independent expenditures in the form of electioneering communications. The Court found that a federal law prohibiting such expenditures had "restrictions [that] are . . . invalid and cannot be applied . . ." *Id.* at 799. The Court reasoned that independent expenditures (including independent expenditures made for the purposes of electioneering communications) did not give rise to corruption or the appearance of corruption, although the Court did not extend this holding to direct corporate contributions or disclosure requirements. *Id.* at 794. The Court stated that "the Government may not suppress political speech on the basis of the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations."

The U.S. Supreme Court confirmed its *Citizens United* ruling applied to Montana in 2012. In *American Tradition Partnership v. Bullock*, the Court applied the same reasoning, invalidating Montana's prohibition on corporate expenditures in section 13-35-227(1), MCA. In that case, the U.S. Supreme Court overruled a Montana Supreme Court opinion that had found that Montana had a compelling interest to impose the prohibition, and, therefore, the ban was justified. *W. Trad. Partn. v. A.G.*, 2011 MT 328. Citing the Supremacy Clause, Art. VI, cl. 2, of the U.S. Constitution, the U.S. Supreme Court stated that "[t]he question presented in this case is whether the holding of *Citizens United* applies to the Montana state law. There can be no serious doubt that it does." *Am. Trad. Partn.*, 132 S. Ct. 2490, 2491 (2012).

Requestor Comments: None